

March 22, 1976

or a similar provision that it somehow assures that the patients and individuals of the State of Nebraska have made a decision to limit their rights and privileges, that this bill will be found to be unconstitutional. I simply can't believe that any court will sustain this bill and sustain the limitations imposed herein in the absence of a finding that the person who gave up these rights knowingly did so and understandingly did so and knew what he was giving up at the time that he entered into the relationship. Under the current proposal, in the absence of my amendment, the citizens and patients of the State of Nebraska will make no such decision. They will not have any opportunity to make a knowing and understanding election to come within or without the terms of this bill. There is a requirement placed upon them that they must file with the Director of the Department of Insurance their decision not to come within the bill. It is clear and obvious that most people in the State of Nebraska will not know of that provision, not know of that requirement, not know of that obligation, and, therefore, will be waiving their rights and privileges without ever having any opportunity to know or understand that they are doing so. In addition to that, you would have, of course, the more severe complication of in the case of illiteracy. Those individuals have even a more remote chance of understanding what rights and privileges they are giving up. So under those conditions I would urge the adoption of this amendment.

PRESIDENT WHELAN PRESIDING

PRESIDENT: Senator Schmit.

SENATOR SCHMIT: Mr. President and members of the Legislature, after several hours of debate, I am glad to be back on 434 and I rise in opposition to Senator Cavanaugh's motion or his amendment for the reason that has been given many times. Senator Cavanaugh voices grave concern about the constitutionality of the bill. We all know that Senator Cavanaugh does not want the bill. Therefore, if he is so concerned about the constitutionality of it, why don't he just let it go. The bill will die. That section of it will die and then he has nothing to worry about. I suggest, as I said before, Senator Cavanaugh does not want to improve the bill. He wants to make the bill inoperable. The bill, as is proposed by the Association and by myself, provides a method whereby a patient may elect out. It also provides that a patient may void that election and choose to return under the provisions of the insurance program, if they wish to do so. Over the weekend, I have met with a number of persons who are considerably concerned about several provisions in the bill. If my amendments are adopted, I have worked out a series of other amendments, compromise amendments, which several members here will speak to which I am sure will resolve the issue for this year and we can proceed, then, further on the legislative route that we are suppose to be taking. I will not speak at great length. I think that most of you understand my position. My position